REMARKS

This Amendment is in response to the Office Action mailed November 30, 2005. In the Office Action, the disclosure and certain claims were objected due to minor informalities. In addition, claims 40, 51 and 60 were objected under 35 U.S.C. §112, first paragraph. Claims 37-39, 41-50, 52-59 and 61-69 were rejected under 35 U.S.C. §103(a). Applicants respectfully traverse the rejections and have amended claims 27, 40, 48, 51-52, 57, 60-61 and 66-68 and cancelled claim 41. Reconsideration of the pending claims is respectfully requested

Request for Examiner's Interview

The Examiner is respectfully requested to contact the undersigned attorney if after review, such claims are still not in condition for allowance. This telephone conference would greatly facilitate the examination of the present application. The undersigned attorney can be reached at the telephone number listed below.

Objection of the Disclosure

Page 20, lines 11, 14 and 32 are objected based on a typographical error. In response, Applicants have amended the disclosure to substitute the term "date rate" for "data rate". Withdrawal of the outstanding objection of the disclosure is respectfully requested.

Claim Objections

Claims 27-47, 51 and 60 are objected based on a few minor informalities. Applicants have amended claims 37,40-41, 51-52, 60-61 and 68 to correct these minor informalities. Withdrawal of the outstanding objection of the claims is respectfully requested.

Rejection Under 35 U.S.C. §112

Claims 40, 51 and 60 are rejected under 35 U.S.C. §112, first paragraph. Applicants have amended these claims to alter the limitation that the transmission error factor is a value being a sum of variables to a "function" of elements (i) and (ii) set forth above. Support for this limitation may be found on page 7, lines 12-15 of the subject application.

Withdrawal of the outstanding §112 rejection as applied to claims 40, 51 and 60 is respectfully requested.

Rejections Under 35 U.S.C. §103

Claims 37-39, 41-45, 48-50, 52-55, 57-59, 61-64 and 66-69 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fischer (U.S. Patent No. 5,889,772) in view of Sindhushayana (U.S. Patent No. 6,064,678). Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *See MPEP §2143; see also In Re Fine, 873 F. 2d 1071, 5 U.S.P.Q.2D 1596 (Fed. Cir. 1988).* Herein, at a minimum, the combined teachings of the cited references fail to describe or suggest all of the claim limitations.

With respect to independent claim 48, 57, 66 and 67, Applicants respectfully submit that neither Fischer nor Sindhushayana, alone or in combination, suggests the limitation of *the transmission error factor being a weighted value with transmission errors occurring successively having a different weighting than transmission errors experienced by the first group of data packets occurring sporadically. Emphasis added.* In fact, claim 37 further includes the limitation of the transmission error factor being a weighted value with transmission errors occurring successively *having a greater weighting than transmission errors occurring sporadically. Emphasis added.*

Applicants respectfully submit that the Fischer does not disclose or suggest that the transmission error factor is a weighted value and "[a] burst of concentrated transmission errors would thereby increase the bit error rate more so than sporadic transmission errors." *See page 6 of the Office Action.* For instance, Fischer teaches increments of the DA_BER_attempts and DA_BER_fails counters. The adjust unit (112) may calculate "a ratio of the DA_BER_fails count ... to the DA_BER_attempts count...." *See col. 12 lines 7-9 of Fischer.* This does NOT translate to an implied or implicit weighting of successive versus sporadic errors. As an illustration, consider for example that if 100 attempts were made and five failures occurred, being attempt numbers 96, 97, 98, 99 and 100, the ratio would be 5/100. In contrast if for a different set of 100 attempts there were also five failures, being attempt numbers 1, 27, 35, 62 and 92 the ratio would still be 5/100. Therefore, neither Fischer nor Sindhushayana discloses or suggests weighting successive versus sporadic errors differently as set forth in the independent claims 37, 48, 57, 66 and 67.

Further support of a non-differentiating approach is disclosed in Fischer may be found in the specification itself, which states "adjust unit 112 may calculate the average number of attempts...failures" wherein the emphasis on the word **average** conveys a smoothed, non-responsive, non-differentiating determination of the error factor. *See col. 11, lines 42-47 of Fischer.*

Furthermore, with respect to claims dependent claims 45, 55, 64 and 69, Applicants respectfully submit that neither Fischer nor Sindhushayana disclose automatic adjustment of the fragmentation threshold that comprises changing the fragmentation threshold by a fixed quantity and by a divisional factor each time the fragmentation threshold is adjusted. *See Col. 12 lines 6-15.* Rather, Fischer only states the monitor and adjust unit adjusts the current fragmentation threshold level. There is no mention of any divisional factor as claimed.

Claims 46-47, 56 and 65 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fischer in view of Sindhushayana and Bird (U.S. Patent No. 6,657,954). Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established. However, based on the dependency of claims 46-47, 56 and 65 on independent claims 37, 48 and 57, believed by Applicants to be in condition for allowance, no further discussion as to the grounds for traverse is warranted. Applicants reserve the right to present such arguments in an Appeal is warranted. Withdrawal of the §103(a) rejection as applied to claims 46-47, 56 and 65 is respectfully requested.

Respectfully submitted,

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Dated: 05/01/2006   By:_____

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